SPC Guiding Case No. 172: Case of Qin Jiaxue for Illegal Logging (Criminal Case with Incidental Civil Public Interest Litigation)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Criminal / crime of illegal logging / ecological restoration / replanting and regreening / expert opinion / deposit

Holding

1. When determining a defendant's obligation to restore the forest ecological environment, a people's court may refer to expert opinions and professional opinions issued by forestry planning and design units, the competent authorities of nature reserves, and other bodies, and specify the concrete requirements for fulfilling the restoration obligation, such as the tree species, tree age, location, quantity, survival rate, and completion time.

2. Where a defendant voluntarily pays a deposit as security for the fulfillment of the obligation to restore the ecological environment, the people's court may treat this circumstance as a mitigating sentencing factor.

Basic Facts

The People's Procuratorate of Baojing County, Hunan Province charged the defendant Qin Jiaxue with the crime of illegal logging and initiated a public prosecution before the People's Court of Baojing County. In the course of the proceedings, the Baojing County People's Procuratorate, on the ground that the public interest had been harmed, additionally brought an incidental civil public interest lawsuit before the People's Court of Baojing County.

The Baojing County People's Procuratorate held that the criminal liability of the defendant Qin Jiaxue should be pursued for the crime of illegal logging. At the same time, the defendant's conduct had seriously damaged the ecological environment and caused harm to the public interest; in accordance with the relevant provisions of the Tort Liability Law, the defendant should replant trees and restore greenery and apologize to the public. The defendant Qin Jiaxue raised no objection to the procuratorate's accusation. However, he argued that he was the actual operator and owner of the forest and had proactively paid a deposit for replanting and regreening, and requested a lighter sentence.

The People's Court of Baojing County found upon trial that, with the state-owned Baiyunshan Forest Farm of Baojing County, established in 1958, as the core, Baojing County established the Baiyunshan county-level nature reserve in 1998. The reserve was later rated as the Baiyunshan provincial-level nature reserve in 2005, and the demarcation of the public-welfare forest area was completed; it was rated as the Hunan Baiyunshan national-level nature reserve in 2013. In the meantime, in 1998, the defendant Qin Jiaxue contracted the mountain forest at "Tudi'ao" (a place name) within the core area of the Baiyunshan nature reserve in Wodang Village, Maogou Town, Baojing County, and from the following year began to plant a Chinese fir forest in a planned manner; the forestland is located within the public-welfare forest area and constitutes public-welfare forestland. From September 2016 to January 2017, Qin Jiaxue, without a timber harvesting permit, in violation of the Forest Law, arbitrarily felled and sold the Chinese fir forest on the forestland he had contracted; the felled area within the core area of the reserve was 117.5 mu, and the area outside the core area was 15.46 mu. Upon appraisal, Qin Jiaxue felled a total of 1,010 trees with a timber volume of 153.3675 cubic meters. The Baojing County Forestry Survey, Planning and Design Team later

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issued a work design statement for replanting and regreening, proving that the cost of artificial seedlings and other expenses for replanting and regreening the damaged public-welfare forest was RMB 66,025.

During the trial, the Baojing County Forestry Survey, Planning and Design Team, the Baojing County Forestry Bureau, and the Baiyunshan national-level nature reserve put forward specific suggestions and professional requirements for the replanting and regreening of the damaged public-welfare forest. Qin Jiaxue paid in advance a deposit of RMB 66,025 for replanting and regreening, guaranteeing the fulfillment of the replanting and regreening obligation.

Judgment

The People's Court of Baojing County, Hunan Province rendered Criminal Judgment with Incidental Civil Judgment (2018) Xiang 3125 Xing Chu No. 5 on August 3, 2018, finding that the defendant Qin Jiaxue had committed the crime of illegal logging, sentencing him to a fixed term of imprisonment of three years with a four-year suspension, and imposing a fine of RMB 10,000, and ordering that, within two years after the judgment took effect, he plant 5,050 one-year-old Chinese fir seedlings at "Tudi'ao" within the Hunan Baiyunshan national-level nature reserve, with a survival rate of not less than 90%. After the judgment was pronounced, no appeal or protest was filed, and the first-instance judgment became legally effective. In accordance with the judgment, the defendant planted 5,050 one-year-old Chinese fir seedlings at the originally felled forestland and other places, with a survival rate reaching 100%.

Reasoning

The effective judgment held: the defendant Qin Jiaxue, in violation of the provisions of the Forest Law, without the permission of the competent forestry authorities, illegally felled a huge quantity of public-welfare forest within the core area of the Baiyunshan national-level nature reserve without a permit, constituting the crime of illegal logging. The defense counsel's opinion that the defendant was a first-time offender, had confessed, had proactively paid a deposit of RMB 66,025 for replanting and regreening into the court's enforcement account, and had shown remorse, and should therefore be given a lighter sentence, was accepted. The Baiyunshan national-level nature reserve is located in the Wuling mountain area and the Youshui River basin, one of China's seventeen key biodiversity areas; it is an important node on the natural flow corridor for animal and plant resources between the Yunnan-Guizhou Plateau and the Sichuan Basin and the Xuefeng mountain area and the central Hunan hills, and is an important water-source conservation area of the Yuanjiang River, a tributary of Dongting Lake in the Yangtze River basin. Its forest resources play an important role in conserving water and soil and maintaining biodiversity. The trees contracted, planted, and managed by the defendant have become an inseparable organic part of the forest resources of the Baiyunshan national-level nature reserve. The defendant illegally felled such trees without a permit, and the quantity was huge; his conduct seriously damaged the ecological environment of the Baiyunshan national-level nature reserve, endangered biodiversity protection, and caused serious harm to the public interest, and was in nature a tortious act. Incidental civil public interest litigation is not civil litigation in the traditional sense, and the public interest litigation plaintiff is not a victim in the ordinary sense. The public interest litigation plaintiff's claim requiring the defendant to bear the legal liability of restoring the original state had a legal basis and was supported. According to the work design statement for replanting and regreening at "Tudi'ao" issued by the Baojing County Forestry Survey, Planning and Design Team and the professional materials and suggestions provided by experts from the Baiyunshan Nature Reserve Administration, the Baojing County Forestry Bureau, and other departments, and with reference to the provisions of Article 39, paragraph 2 of the Forest Law, the public interest litigation plaintiff's claim that the defendant should replant trees was considered to have scientific and reasonable grounds and a legal basis, and was supported. The defense counsel's opinion that the defendant's operating rights as a forestland contractor should also be protected in accordance with the law had a reasonable aspect and was taken into account when specifically determining the defendant's legal liability. The above judgment was accordingly rendered.

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Relevant Legal Provisions

Article 179 of the Civil Code of the People's Republic of China (the case applied Article 15 of the Tort Liability Law of the People's Republic of China, effective from July 1, 2010).

Articles 56, 57, and 76 of the Forest Law of the People's Republic of China (the case applied Articles 32 and 39 of the Forest Law of the People's Republic of China, as amended on August 27, 2009).

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